No. 16816

United States Court of Appeals

For the Ninth Circuit

PORTLAND BASEBALL CLUB, INC.,
an Oregon corporation,
Appellant,

vs.

FORD C. FRICK,
COMMISSIONER OF BASEBALL, et al.,
Appellees.

Appellees' Brief

Appeal from the United States District Court for the District of Oregon

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Appellees' Brief

Appeal from the United States District Court
for the District of Oregon

JURISDICTIONAL STATEMENT

This is an appeal from an order of the United States District Court for the District of Oregon dismissing the Appellant's Amended and Supplemental Complaint for lack of jurisdiction of the Court over the subject matter of the action and because of failure of the plaintiff to state a claim upon which relief could be granted (R. 82-83).

The original Complaint and the Amended and Supplemental Complaint were filed on August 3,

1959 and November 24, 1959, respectively, under §§15 and 26 of Title 15 U.S.C., being part of the Clayton Act, for alleged violations of the federal antitrust laws. The Appellees, on October 13, 1959, moved to quash the summons issued to them and to dismiss the original Complaint on various grounds, including lack of jurisdiction over the persons of the defendants and over the subject matter (R. 71-76). Upon stipulation of the parties, an order was entered on October 21, 1959, by the District Court that the motions to dismiss the action because of lack of jurisdiction over the subject matter and because of the failure of plaintiff to state a claim upon which relief could be granted, should be segregated and be first heard and determined by the Court before hearing or determination of defendants' other motions (R. 77-80) and this order was later extended by order dated December 14, 1959, to the Amended and Supplemental Complaint (R. 80-82).

This Court has jurisdiction of the appeal by virtue of the provisions of 28 U.S.C. §1291.

STATEMENT OF THE CASE

Appellant is Portland Baseball Club, Inc., which operates a professional baseball club as a member of the Pacific Coast League. Appellees are fifteen corporations, each of which owns and operates a Major League baseball club as a member either of The National League of Professional Baseball Clubs

or of The American League of Professional Baseball Clubs. The Complaint also named as defendants Ford C. Frick, Commissioner of Baseball; New York Yankees, a co-partnership; The American League of Professional Baseball Clubs and its President, Joseph Cronin; and The National League of Professional Baseball Clubs and its President, Warren Giles, none of whom has been served in the action.

The Appellant brought the action for damages and equitable relief for alleged injuries to it in its business of conducting exhibitions of professional baseball claimed to have been caused by defendants' alleged violations of §§1 and 2 of the Sherman Act (15 U.S.C., §§1, 2). The alleged violations of the antitrust laws are stated in considerable detail in the Complaint (R. 16-31), and summarized on page 3 of Appellant's Brief. In further summary, it can be fairly said that the Complaint alleges that Appellant is engaged in the baseball business (R. 4-16), and has been damaged in that business by practices of the defendant Major League clubs in (1) monopolizing baseball players, (2) dominating the Minor Leagues, and (3) telecasting Major League baseball games into Minor League territory (R. 16-31).

The single question presented is whether the federal antitrust laws are applicable to the aspects of the business of baseball to which the allegations of the Amended and Supplemental Complaint relate. The District Court held that this question is

answered by the decision of the Supreme Court in *Toolson v. New York Yankees et al.* (1953), 346 U.S. 356, affirming a decision by this Court and holding that the antitrust laws are not applicable to the business of baseball.

SUMMARY OF ARGUMENT

The United States Supreme Court has directly and consistently held that the federal antitrust laws are not applicable to the business of organized professional baseball. In its latest direct decision on baseball (*Toolson v. New York Yankees et al.,* 346 U.S. 356 (1953)), the Supreme Court had before it three cases which involved all the aspects of the baseball business alleged in the Appellant's Complaint.

Appellant is asking this Court to overrule its own decision and the Supreme Court decision in *Toolson* on the ground that *Radovich v. National Football League,* 352 U.S. 445 (1957), "effectively overrules the *Toolson* decision" (Appellants' Brief p. 21). This argument is conclusively answered by the opinion in *Radovich* which specifically reaffirmed the exempt status of baseball under *Toolson* and reiterated the Court's position that any application of the antitrust laws to baseball should be enacted by new Congressional legislation and not by court decision. As Appellant concedes, "Congress has not acted, either to exempt or include professional sports" (Appel-

lants' Brief p. 20). Since *Radovich,* the Eighty-Fifth and Eighty-Sixth Congresses have considered various bills concerning the status of baseball and other professional team sports under the antitrust laws but have enacted none of them.

ARGUMENT

1. The Supreme Court of the United States has directly and consistently held that the federal antitrust laws are not applicable to the business of organized baseball.

This question has been before the Supreme Court of the United States in four cases. One came to it from the District of Columbia, two from the Sixth Circuit, and one from this Circuit. Collectively, these cases have presented to the Court all of the features of the business of organized baseball here involved. In each case, the Supreme Court held that the business of organized baseball was not within the scope of the antitrust laws.

The Federal Baseball Case (259 U.S. 200)

In *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs,* 259 U.S. 200 (1922) (hereinafter referred to as the "Federal Baseball case"), the Supreme Court of the United States was first confronted with the question as to whether the Sherman Act is applicable to the business of professional baseball. There, as here, the

plaintiff urged that the business of baseball was subject to the Sherman Act because the clubs engaged in interstate commerce when they crossed state lines with players and equipment in order to play one another. The Supreme Court, in a unanimous opinion written by Mr. Justice Holmes, held that the Sherman Act was not applicable to the business of baseball.

The Toolson Decision (346 U.S. 356)

In 1951, three Sherman Act suits (*Corbett v. Chandler; Toolson v. New York Yankees;* and *Kowalski v. Chandler*), 346 U.S. 356, were instituted against professional baseball clubs, the Commissioner of Baseball and others. In those suits the plaintiffs severally sought to avoid the *Federal Baseball* case by alleging, as the Portland club here alleges, that the defendants were engaged in interstate commerce and thereby subject to the Sherman Act because, in addition to the essential act of crossing state lines to play one another, the defendants derived substantial income from the sale of rights for nationwide broadcasting and telecasting of games played by their respective clubs and from the sale of interstate advertising rights. In each of the three cases, the trial court dismissed the complaint before trial, and each Court of Appeals, including this Court in *Toolson v. New York Yankees,* 200 F. 2d 198 (1952), affirmed the dismissal.

In 1953, the United States Supreme Court granted certiorari in these cases and they were argued and decided together. (The three cases have become widely known as the Supreme Court's "*Toolson* decision".) In an opinion affirming judgments in favor of the defendants, which had dismissed the actions for lack of jurisdiction of the subject matter and for failure to state a claim upon which relief could be granted, the Supreme Court said in full (346 U.S. 356):

> "In *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs,* 259 U.S. 200 (1922), this Court held the business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of the federal antitrust laws. Congress has had the ruling under consideration but has not seen fit to bring such business under these laws by legislation having prospective effect. The business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation. The present cases ask us to overrule the prior decision and, with retrospective effect, hold the legislation applicable. We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation. Without re-examination of the underlying issues, the judgments below are affirmed on the authority of *Federal Baseball Club of Baltimore v. National League of Professional Clubs,* supra, so far as that decision

> determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws."

The *Toolson* decision fully covers all of the allegations and arguments made in this action. There, as here, the plaintiffs sought to avoid the *Federal Baseball* decision by stressing baseball's "radio and television activities" and "its sponsorship of interstate advertising" and by arguing that decisions relied upon in *Federal Baseball* had been overruled.* But the Court rejected these contentions and on the authority of *Federal Baseball,* reasserted that the federal antitrust laws are not applicable to the business of baseball.

The allegations in the three cases involved in the *Toolson* decision show striking similarities to the allegations in the complaint in this case. A detailed comparison is set out in the Appendix to this brief. At this point we will briefly describe each of the three cases.

Corbett v. Chandler (202 F. 2d 428)

In 1951, Jack Corbett, then owner and operator of the El Paso Minor League club, instituted an action in the Federal Court for the Southern District of Ohio, against Albert B. Chandler, then Commissioner of Baseball, and others. In that action, Corbett alleged that the agreements and rules of base-

*That all these contentions were considered by the Supreme Court is shown in the dissenting opinion (346 U.S. 357-365).

ball were a restraint on interstate trade and commerce in violation of the Sherman Act, that they deprived him of baseball players under contract to him and prevented him from signing and disposing of others at a profit, and that he had been injured in the operation of his Minor League club. He further claimed the broadcasting, publicity and other channels of communication necessary for and related to the playing of baseball made antitrust laws applicable to those administering and playing the game. He argued in his brief in the Supreme Court that "Organized Baseball maintains its monopoly over the exhibition of professional games within its parks and over radio and television for profit in interstate and foreign commerce through its exclusive control over the market for professional players."

The District Court for the Southern District of Ohio dismissed the action (opinion not reported) and on appeal the decision was affirmed, 202 F. 2d 428 (6th Cir. 1953).

Kowalski v. Chandler **(202 F. 2d 413)**

Kowalski was a Minor League player who alleged in a Sherman Act action that he had been deprived of an opportunity for promotion and damaged by the Major League clubs' monopolization of baseball and by their operation of their "Farm System" whereby they controlled Minor League clubs. He sought to distinguish his case from the *Federal Baseball* case by alleging facts concerning the sale of

broadcasting rights. The District Court for the Southern District of Ohio dismissed the action for lack of jurisdiction of the subject matter and for failure to state a claim upon which relief could be granted (no opinion reported). The decision was affirmed on appeal, 202 F. 2d 413 (6th Cir. 1953), and the Court of Appeals specifically rejected the broadcasting allegations as a basis for distinguishing *Federal Baseball*. The opinion cited *Toolson* (101 F. Supp. 93) to the same effect.

***Toolson v. New York Yankees* (200 F. 2d 198)**

In 1951, Toolson, a Minor League baseball player, brought an action in the District Court for the Southern District of California for treble damages against the New York Yankees and other baseball parties. He alleged that the defendants had monopolized baseball; that he was a baseball pitcher and was prevented from following that profession by having been placed upon the blacklist. In his amended complaint he also alleged:

> "the defendants and those combined with them in said illegal combination control and own all of the players in professional baseball, control all of the teams in professional baseball and control all of the games and exhibitions thereof, including exhibition by radio and television among the several states of the United States; * * * As a result of such combination the defendant and those combined with them have greatly lessened and eliminated all competition in the

> exhibition of baseball games by broadcasting or televising among the several states; that the place, time, quality of game exhibited, area within which said exhibit is to be sent have been and are strictly controlled by the defendants and by those combined with them in said illegal combination. * * *"

Judge Harrison, in an opinion reported in 101 F. Supp. 93 (S.D. Cal. 1951), dismissed the action both for lack of juridiction of the subject matter and for failure to state a claim upon which relief could be granted. In part, the Court said, at page 95:

> "If the Supreme Court was in error in its former opinion or changed conditions warrant a different approach, it should be the court to correct the error. Trial courts in my opinion should not devote their efforts to guessing what reviewing courts may do with prior holdings because of lapse of time or change of personnel in such courts. We are supposed to be living in a land of laws. Stability in law requires respect for the decisions of controlling courts or face chaos."

This Court, in a *per curiam* opinion, 200 F. 2d 198 (1952), affirmed the decision of Judge Harrison on the grounds stated in his opinion.

The *Toolson* decision, 346 U.S. 356, which decided the three cases summarized above, is the last decision of the Supreme Court dealing directly with the applicability of the Sherman Act to organized professional baseball.

Appellant argues that "modern baseball" cannot be compared to 1920 baseball and that nationwide scouting, radio broadcasting and television, farm clubs and working agreements and related business activities, such as concessions, present a different set of facts from the *Federal Baseball* case (Appellant's Brief, p. 14). To demonstrate that "modern baseball" and all of the claims and subjects in the Appellant's Complaint were fully presented to the Supreme Court in *Toolson,* we have set forth in the Appendix hereto a comparison of the Appellant's Complaint with those in *Toolson, Corbett* and *Kowalski.*

In those three cases, the Supreme Court had before it complaints containing allegations about the monopolization of players, the reserve clause, the Major Leagues' farm systems and their control of Minor League clubs, the radio broadcasting and telecasting of games, interstate travel, national advertising and numerous other details of the baseball business.

The Court's decision in *Toolson* did not concern itself with any such details, but rested on the broad proposition that the "business of baseball" is outside the scope of the antitrust laws. Appellant's Amended Complaint here deals from start to finish with the business of baseball and therefore cannot be sustained without overruling the *Toolson* decision.

2. The *Toolson* decision is controlling here and has not been overruled by *Radovich v. National Football League*, 352 U.S. 445.

Faced with the square holding of *Toolson,* Appellant is forced to argue that this Court should overrule the *Toolson* decision on the ground that *Radovich v. National Football League* (1957), 352 U.S. 445, "effectively overrules the *Toolson* decision" (Appellant's Brief, p. 21).

Without burdening this Court with a detailed analysis of the discussion in Appellant's brief which leads Appellant to this astonishing conclusion, we merely refer to the language of the majority opinion in *Radovich* which makes it crystal clear that *Toolson* is still controlling authority for the proposition that the business of organized professional baseball is not subject to the antitrust laws. The *Radovich* opinion states (352 U.S., at 451-452):

> "It seems that this language would have made it clear that the Court intended to isolate these cases by limiting them to baseball, but since *Toolson* and *Federal Baseball* are still cited as controlling authority in antitrust actions involving other fields of business, we now specifically limit the rule there established to the facts there involved, i.e., the business of organized professional baseball. As long as the Congress continues to acquiesce we should adhere to—but not extend—the interpretation of the Act made in those cases."

* * *

> "But *Federal Baseball* held the business of baseball outside the scope of the Act. No other business claiming the coverage of those cases has such an adjudication. We, therefore, conclude that the orderly way to eliminate error or discrimination, if any there be, is by legislation and not by court decision."

There is not one word in the *Radovich* decision which indicates an intention of the Supreme Court to overrule the applicability of the *Toolson* decision to baseball. In both *Toolson* and *Radovich,* the Supreme Court clearly leaves it to Congress to make any change in baseball's status under the antitrust laws. In that connection, it may be noted that numerous bills, which would either affirmatively exempt or affirmatively subject all or most aspects of baseball and other organized team sports from or to the antitrust laws, have been introduced into the Eighty-Fifth and Eighty-Sixth Congresses, but none of them has been enacted. (See Eighty-Fifth Congress: H.R. 5307, H.R. 5319, H.R. 5383, H.R. 6876, H.R. 10378, H.R. 10918, S. 4070; Eighty-Sixth Congress: H.R. 2370, H.R. 8658, S. 616, S. 886, S. 2545, S. 3483.)

This Court has made it very clear that (1) it will not undertake to overrule applicable Supreme Court decisions (*Sauer v. United States,* 241 F. 2d 640, 652 (9th Cir. 1957)) and (2) it will sustain decisions of the District Courts which follow applicable decisions of this Court (*California State Board of*

Equalization v. Goggin, 245 F. 2d 44, 45 (9th Cir. 1957)).

Toolson is the controlling law of this case and, accordingly, the decision of the District Court granting the motion to dismiss on the authority of *Toolson* should be affirmed.

Respectfully submitted,

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APPENDIX

All allegations of the Amended and Supplemental Complaint which pertain to the subject matter of the action and the statement of the Portland Club's claim also pertain to subjects or claims which were presented to the United States Supreme Court in one or more of the complaints in the *Toolson, Corbett* and *Kowalski* cases. It is fair to say that the Amended and Supplemental Complaint deals with the following general subjects or claims.

1. The Major League clubs are engaged in interstate trade and commerce through various specified activities such as interstate travel and sale of broadcasting rights and advertising on a national scale.
2. A conclusory allegation that the defendants are engaged in a combination and conspiracy to restrain and monopolize the interstate business of baseball.
3. Certain basic documents of baseball evidence and implement this conspiracy.
4. The defendants control and monopolize the supply of baseball players.
5. The defendants dominate and control the Minor League clubs through ownership of or working agreements with Minor League clubs.
6. The defendants determine the circuits of Major League baseball and seek to deprive Minor League clubs of advancement.

7. The sale of broadcasting and telecasting rights by Major League clubs is illegal, and violates Rule 1-A of Major-Minor League rules.

The following extracts from the complaints in *Toolson, Corbett* and *Kowalski* demonstrate that the claims presented by the Portland Amended and Supplemental Complaint were heretofore presented to the Supreme Court.*

1. Interstate trade or commerce—interstate activities of Major League clubs.

Portland, pars. 2 [R. 4]; 3 [R. 4-7]; 12 [R. 12-15]; 13 [R. 15]; 14 [R. 15-16]; 15 [R. 16]; 16 [R. 16-28].

Toolson, 1st cause, par. IX:

"* * * that the various teams and leagues and the Defendants herein enter into contracts, for large payments of money, with radio broadcasting and television companies, by which the various clubs cooperate with the radio broadcasting and television companies, in producing the baseball games and transmitting them by narration and as a television picture to the outside public in the various states of the United States."

Corbett, par. XVII:

All National and American League clubs travel from state to state in the completion of their schedules and transport or cause to be transported at their own expense equipment to play the games.

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*The paragraph reference to the Portland Amended and Supplemental Complaint is followed by a bracketed reference to the page of the transcript of the Record where such paragraph is printed.

Par. XIX:

"* * * that in completing the schedule for each season, state lines are systematically crossed; that radio broadcasters announce 'play by play' descriptions of the game (fol. 5) over interstate networks; that television carries the sights and the sounds of the scheduled games across state boundaries; that the seasonal rights to make these broadcasts and telecasts are sold by the clubs of the Major Leagues for large sums."

Par. XX:

"That radio and television, the newspaper publicity and the other avenues and channels of communication used, attendant upon, necessary for and related to the playing of Major League Baseball, and the purchase by the clubs and Leagues for this purpose of essential equipment and the transportation across state lines of essential equipment and of the requisite personnel by the clubs and Leagues for the fulfillment of their respective schedules, cause those administering and playing the game to be engaged in interstate commerce and to derive a substantial portion of their income from such source."

Par. XXI:

Broadcasting and television rights of the "Dream Game" played annually in July between selected members of each League yield larger amounts of income for the broadcasting and television rights than is derived from fees for admissions.

Par. XXII:

"* * * that the sale of the broadcasting and telecasting rights yields to Organized Baseball from the 'World Series' a substantial portion of its income through these sources of interstate commerce; and that the sale of broadcasting and television rights for the 1950 World Series produced a larger revenue than was received for the total fees paid by members of the public for admission to the two ball parks wherein the games of such World Series were played."

Par. XXVIII:

"That further sources of interstate income are derived by the clubs of the Major Leagues from the authority exercised by them in accordance with the provisions of the uniform or standard contracts, under which the players are employed, to 'trade' such players to another club through the assignment by the employing 'farm club' directly or as the agent or intermediary for its 'parent' Major League club, of the players' contracts to such other club as assignee."

Kowalski, par. 30:

"Radio and television, the newspaper publicity and the other avenues and channels of communication used, attendant upon, necessary for and related to the playing of Major League Baseball and to the training and preparation for said playing of the season's schedules, which preparation includes extensive interstate late winter and early spring training schedules of pre-season games; the purchase by the clubs and

leagues of essential equipment and its transport and that of the requisite personnel by the clubs and leagues for the training and preparation for, and in the fulfillment of, their schedules and of their respective contracts with sponsors and radio and television companies and others for the broadcasting and re-broadcasting and telecasting, in whole or in part, of the scheduled, pre-season and post-seasons games, cause those administering and playing the games of Organized Baseball to be engaged in interstate commerce by the derivation of a substantial portion of their income from such source."

2. Major League clubs are in a combination or conspiracy to restrain and monopolize the interstate business of baseball.

Portland, pars. 1 [R. 3-4]; 2 [R. 4]; 5 [R. 8-9]; 16 [R. 16]; 16(k) [R. 25]; 16(m) [R. 26-28]; 17 [R. 29]; 18 [R. 29]; 19 [R. 29]; 20 [R. 29-30]; and 23 [R. 31].

Toolson, 3rd Cause, par. II:

"That the Defendants and each of them, have combined together to monopolize professional baseball in the United States, * * *

Amendment II-A:

"That defendant and those combined with them in said illegal combination have acted in full accordance and fidelity with the terms of the agreement set forth in Paragraph II hereof; that by reason of the combination thereunder the defendants and those combined with them

in said illegal combination control and own all of the players in professional baseball, control all of the teams in professional baseball and control all of the games and exhibitions thereof, including exhibition by radio and television among the several states of the United States; * * *"

Corbett, par. LXXII:

"That defendants have used, and are continuing to use, the 'reserve clause,' the Major League Agreement, the Major-Minor League Agreement and the cognate agreements and rules contrary to the adjudicated principles of equity and common law, and to monopolize or attempt to monopolize trade or commerce among the several states and with foreign nations in violation of section 1, 2 and 3 of the Sherman Anti-Trust Act (15 U.S.C.A., sections 1, 2 and 3) and of section 4 of the Clayton Act (15 U.S.C.A., section 15.)"

Kowalski, par. 34:

"Organized Baseball maintains a monopoly in interstate and foreign commerce over the exhibition of professional baseball games for profit through its exclusive control over the market for professional players."

3. The basic documents of baseball.

Portland, pars. 5 [R. 8-9]; 6 [R. 9]; 8 [R. 11]; 9 [R. 12]; 10 [R. 12]; 11 [R. 12]; 16(a) [R. 17-18] and 16(m) [R. 26-28].

Toolson, 1st cause, par. XI:

"That the Defendants, and each of them, have entered into or agreed to be bound by a contract in the restraint of Interstate Commerce; that said contract is designated as the Major-Minor League Agreement, dated December 6, 1946 * * *"

Corbett, par. XXVI:

"That Organized Baseball is governed by the Major League Agreement, Major League Rules, Major-Minor League Agreement, Major-Minor League Rules and the National Association Agreement."

4. The defendants control and monopolize the supply of baseball players.

Portland, pars. 3(a) [R. 4-5]; 12(d) [R. 14]; 16(a) [R. 17-18]; 16(b) [R. 18-19]; 16(c) [R. 19]; 16(d) [R. 19] and sub-pars. (1) [R. 19], (4) [R. 20-21], and (7) [R. 22]; 16(h) [R. 23-24]; 16(m) [R. 26-28]; 16(n) [R. 28] and 23 [R. 31].

Toolson, 1st cause, par. XI:

(Note: Portland's Amended Complaint, par. 16(m) [R. 26-28], sub-pars. (1) through (11) inclusive, is copied verbatim from the following language of *Toolson's* Par. XI:

"That the Defendants, and each of them, have entered into or agreed to be bound by a contract in the restraint of Interstate Commerce; that said contract is designated as the Major-Minor League Agreement, dated December 6, 1946 and provides in effect that:

1. All players' contracts in the Major Leagues shall be of one form and that all players' contracts in the Minor Leagues shall be of one form.

2. That all players' contracts in any league must provide that the Club or any assignee thereof shall have option to renew the player's contract each year and that the player shall not play for any other club but the club with which he has a contract or the assignee thereof.

3. That each club shall, on or before a certain date each year, designate a reserve list of active and eligible players which it desires to reserve for the ensuing year. That no player on such a reserve list may thereafter be eligible to play for any other club until his contract has been assigned or until he has been released.

4. That the player shall be bound by any assignment of his contract by the club, and that his remuneration shall be the same as that usually paid by the assignee club to other players of like ability.

5. That there shall be no negotiations between a player and any other club from the one which he is under contract or reservation respecting employment either present or prospective unless the Club with which the player is connected shall have in writing expressly authorized such negotiations prior to their commencement.

6. That in the case of Major League players, the Commissioner of Baseball and in the case of Minor League players, the President of the National Association, may determine that the best

interests of the game require a player to be declared ineligible and, after such declaration, no club shall be permitted to employ him unless he shall have been reinstated from the ineligible list.

7. That an ineligible player whose name is omitted from a reserve list shall not thereby be rendered eligible for service unless and until he has applied for and been granted reinstatement.

8. That any player who violates his contract or reservation, or who participates in a game with or against a club containing or controlled by ineligible players or a player under indictment for conduct detrimental to the good repute of professional baseball, shall be considered an ineligible player and placed on the ineligible list.

9. That an ineligible player must be reinstated before he may be released from his contract.

10. That clubs shall not tender contracts to ineligible players until they are reinstated.

11. That no club may release unconditionally an ineligible player unless such player is first reinstated from the ineligible list to the active list."

Amendment II-A, 3rd cause:

"That defendant and those combined with them in said illegal combination have acted in full accordance and fidelity with the terms of the agreement set forth in Paragraph II hereof;

that by reason of the combination thereunder the defendants and those combined with them in said illegal combination control and own all of the players in professional baseball, control all of the teams in professional baseball and control all of the games and exhibitions thereof, including exhibition by radio and television among the several states of the United States. * * *"

Corbett, par. LXXI, 1st cause:

"That the right of reservation has created a monopoly exercised by the Major League club owners; that this monopoly rests upon the grant of franchises to the clubs of The National League upon the basis of the distribution of population in 1890; and for The American League of the distribution of population in 1900; that each circuit requires the unanimous consent of its club owners for a change; that the Pacific Coast is deprived by these private agreements of Major League status; that Detroit with the intervening growth of the motor vehicle industry should have a second Major League Club; that the existence of the monopoly over Major League Baseball has its source in the 'reserve clause;' that the effect this monopoly works against the public interest * * *"

Kowalski, par. 34:

"Organized Baseball maintains a monopoly in interstate and foreign commerce over the exhibition of professional baseball games for profit through its exclusive control over the market for professional players."

5. The defendants dominate and control the Minor League clubs through ownership of or working agreements with Minor League clubs and through subsidies.

Portland, pars. 3(c) [R. 5-6]; 3(d) [R. 6]; 3(f) [R. 7]; 16(a) [R. 17-18]; 16(d)(3) [R. 20]; 16(c) [R. 19]; 16(g) [R. 23]; 16(h) [R. 23-24]; 16(i) [R. 24] and 23 [R. 31].

Corbett, par. XXVI:

"That Organized Baseball is governed by the Major League Agreement, Major League Rules, Major-Minor League Agreement, Major-Minor League Rules and the National Association Agreement."

Par. XXVII:

"That these various agreements permit the clubs in the Major Leagues to own or control, or to have their own agreements with, Minor League clubs for the training and development of players upon such 'farm clubs'; and that every Major League club owns one or more of these 'Farm Clubs.'"

Kowalski, par. 79:

"Article VI, section 4 of The National Agreement prohibited farming by Major League Clubs; that is, the ownership by them of minor league clubs; * * *"

Par. 146:

"Defendants have permitted the 'Farm System' to operate as a monopoly within a monopo-

ly to the unjust enrichment of defendant Brooklyn National League Baseball Club from the employment of plaintiff for three years and upward under the otherwise unlawful Minor League standard contract of Organized Baseball."

6. The defendants determine the circuits of Major League baseball and seek to deprive Minor League clubs of advancement.

Portland, pars. 16(d) [R. 19] and sub-pars. (5) [R. 21], (6) [R. 21-22] and (8) [R. 22-23]; 16(f) [R. 23]; 16(n) [R. 28]; and 20 [R. 29-30].

Toolson, 3rd cause, sub-pars. 2 and 6 of par. II:

"2. That certain designated cities only shall constitute the circuits of the Defendants, National League of Professional Baseball Clubs and American League of Professional Baseball Clubs; that these circuits thus established shall remain unchanged either by withdrawal from a city, or inclusion of another city or by consolidation of clubs within a city, unless in any case the changes approved by the majority of the clubs in each league, except that the circuit of either Major Leagues shall not be changed except by the unanimous consent of the clubs constituting said league."

* * *

"6. That the existing circuits in the Minor League shall not be so changed as to include any city in the Major League circuit or any place within five miles thereof without the written consent of the league concerned."

Corbett, par. LXXI:

"That the right of reservation has created a monopoly exercised by the Major League club owners; that this monopoly rests upon the grant of franchises to the clubs of The National League upon the basis of the distribution of population in 1890; and for The American League of the distribution of population in 1900; that each circuit requires the unanimous consent of its club owners for a change; that the Pacific Coast is deprived by these private agreements of Major League status; that Detroit with the intervening growth of the motor vehicle industry should have a second Major League club; that the existence of the monopoly over Major League Baseball has its source in the 'reserve clause'; that the effect of this monopoly works against the public interest; * * *"

Kowalski, pars. 23 and 24:

"23. The circuit of the National League may not be changed without the unanimous consent of the owner of each franchise in said League."

"24. The circuit of the American League may not be changed without the unanimous consent of the owner of each franchise in said League."

7. The sale of broadcasting and telecasting rights by Major League clubs is illegal.

Portland, pars. 16(d)(2) [R. 19-20], (8) [R. 22-23], 16(j) [R. 24-25], 16(k) [R. 25], 21 [R. 30] and 22 [R. 30].

The Portland Amended and Supplemental Complaint alleges that telecasts of Major League games into Minor League territory are "excessive and illegal" (par. 16(d)(2) [R. 19-20]) and that such telecasts and radio broadcasts violate Major-Minor League Rule 1-A (pars. 21 [R. 30], and 22 [R. 30]).* It is not alleged that such telecasts and broadcasts in themselves violate the antitrust laws; and we cannot see how a *failure* of the Major League clubs to agree to prohibit or otherwise restrict telecasts or broadcasts into Minor League territory could be an antitrust violation. In the *Toolson* case, the much stronger claim was made that the Major League clubs combined to restrict broadcasts and telecasts. *Toolson,* 3rd cause, par. II, sub-par. 3:

> "That to protect the Major Leagues and their constituent clubs in the operation of their franchises in the cities comprising the circuits established and to safeguard the rights of such franchises, the following restrictions on the broadcast or telecast of Major League games were adopted:
>
> (a) Each Major League club may broadcast or telecast its games (both home and away from home) from a station located within its 'home territory.'
>
> (b) No Major League club shall consent to or authorize a broadcast or telecast (including re-

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*In a recent case involving all the defendants named in the Portland Complaint, it was held that the broadcasting and telecasting of Major League games into Minor League territories does not violate Major-Minor League Rule 1(a). *Portsmouth Baseball Corporation v. Frick et al.,* 171 F. Supp. 897 (S.D. N.Y. 1959); aff'd._____F. 2d_____(2d Cir. 1960).

broadcast or network broadcast) of any of its games to be made from a station outside its 'home territory' and within the 'home territory' of any other baseball club, Major or Minor, without the consent of such other baseball club.

'The words 'home territory' shall mean and include, with respect to any baseball club, the territory included within the circumference of a circle having a radius of (50) miles, with its center at the baseball park of such baseball club.' "

Toolson amendment par. II-A:

"That defendant and those combined with them in said illegal combination have acted in full accordance and fidelity with the terms of the agreement set forth in Paragraph II hereof; * * * that as a result of said combination the defendant baseball clubs and those combined with them refuse to authorize a radio broadcast of such club's games to be made from a radio station located outside the home territory of that club and within the home territory of another club, during the time that such other club is playing a home game, unless such other club has prior thereto consented to the broadcast of said game or of any game of another club in a comparable league, during said time from a station located within its home territory; that as a result of said combination defendant baseball clubs and those combined with them have refused to authorize a telecast of the games of such clubs to be made from a station located outside of home territory within the home territory of

another club, during the time that (a) a home game of such other club is being played or (b) the away-from-home game is being telecast from any television station or stations located within the home territory of such club, unless such other club has prior thereto consented to the telecast of said game or of any game of another club in a comparable league, during said time from a station located within its home territory; that within said combination the words 'home territory' shall mean and include with respect to any baseball club, the territory included within the circumference of a circle having a radius of 50 miles, with the center of the baseball park of such baseball club, that as a result of such combination the defendant and those combined with them have greatly lessened and eliminated all competition in the exhibition of baseball games by broadcasting or televising among the several states; that the place, time, quality of game exhibited, area within which said exhibit is to be sent have been and are strictly controlled by the defendants and by those combined with them in said illegal combination, * * *"